

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2003-293-C – ORDER NO. 2004-444
OCTOBER 18, 2004

IN RE: Savannah Valley Cablevision, Inc.,)	
)	
Complainant/Petitioner,)	ORDER DENYING
)	MOTION TO COMPEL
)	
vs.)	
)	
West Carolina Rural Telephone Cooperative,)	
Inc. and West Carolina Communications,)	
LLC,)	
)	
Respondents.)	
_____)	

This matter comes before the Public Service Commission of South Carolina (“Commission”) on a Motion to Compel Responses to Interrogatories filed by West Carolina Rural Telephone Cooperative, Inc. (“WCRTC”) and West Carolina Communications, LLC (“WCC”) (collectively, the “Respondents”). By their Motion, Respondents move that the Commission compel Savannah Valley Cablevision, Inc. (“SVC”) to respond to Respondents’ first set of interrogatories in the instant docket.

Respondents state that they served SVC with interrogatory requests on March 19, 2004. SVC filed its response on March 29, 2004. According to the Respondents, SVC objected to 25 of the 32 interrogatories. Respondents request that the Commission compel responses to 21 interrogatories to which SVC did not respond. SVC objected to

the interrogatories on the ground that the information requested was not relative to the issues raised by SVC in its Complaint. Respondents state that through the interrogatories they seek to learn more about the nature of SVC's business and service. Respondents state that in order to assess the allegations that SVC raised by its Complaint, it is essential for the Respondents to know specific facts about SVC's business and service. By its interrogatories, Respondents state they have sought information that would be relevant to the management and financial stability of SVC including major stockholders, changes in ownership, compensation to board members, profit and loss, debt, audited financial statements, trends in average revenues per customer, contracts for use of facilities, outside contractor information, feasibility studies and business plans, and plans to provide services other than cable television. Respondents state they have also sought information relevant to the quality of service provided to SVC's customers including customer complaints, meetings to address service quality, age of facilities and equipment, upgrades performed or discussed, attempts to sell the company, and inquiries to purchase the company. Respondents submit that all of the requested information is relevant to its defense of the Complaint in this proceeding.

SVC filed a return to the Motion to Compel and acknowledged that SVC provided answers to 11 of the interrogatories propounded by Respondents and objected to the remainder. SVC asserts that the Motion to Compel should be denied. First, SVC notes that Rule 11 SCRCP requires parties to consult with each other on discovery unless consultation would serve no useful purpose. SVC states that Respondents did not consult

with SVC as required under Rule 11 SCRCPC and did not offer any certification that consultation would have served no useful purpose.

Second, SVC asserts that Respondents have voluntarily forgone an opportunity to conduct discovery. Respondents served notice of depositions on the two principals of SVC. SVC did not object to the depositions but cooperated in scheduling them. SVC states that it expected that these depositions to provide an opportunity for the parties to resolve most or all of the matters covered by the Motion to Compel. However, Respondents cancelled the depositions. While SVC had no objection to the cancellation of the depositions, SVC does believe that it is inappropriate for Respondents to continue to pursue their Motion to Compel after having voluntarily given up an opportunity to conduct discovery by deposition which would have narrowed the issue presented in the Motion to Compel.

Third, SVC asserts that the Respondents' Motion should be denied because their discovery quest did not seek information within the scope of discovery. While generally discovery may be obtained on any matter relevant to the subject matter whether it relates to a claim or defense asserted, SVC asserts that Respondents' discovery seeks matters outside the scope of the issues raised by SVC's Complaint and outside the scope of the defenses raised by Respondents. SVC states that the issues raised by its Complaint concern the relationship between WCRTC and its affiliate, WCC. The Complaint asserts that these two entities have entered into contractual arrangements which are subject to the jurisdiction of the Commission and that those contracts should have been submitted to the Commission for approval. While the Complaint asserts SVC's belief and concern that

these violations are permitting WCRTC to subsidize WCC's competitive provision of "digital entertainment services," the issues raised by the Complaint relate to the Commission's regulatory authority over WCRTC. SVC states that no discovery of its finances or operations is relevant to the issues raised by the Complaint. While Respondents assert in their Motion that the matters it seeks to discover are relevant to issues raised by them as defenses, Respondents do not explain which defenses they refer to, and a review of their answer does not support this assertion. Respondents' answer asserts as a first defense, a denial of SVC's assertion that they have violated statutory and regulatory requirements. Second, Respondents assert affirmatively that the Commission lacks jurisdiction over the matters alleged in the Complaint. SVC asserts that neither of these defenses expands the scope of discovery to include the matters sought by Respondents in their Motion to Compel.

Upon consideration of the Motion to Compel and the Response, the Commission finds and concludes that the Motion to Compel filed by the Respondents should be denied. The Commission finds that the discovery requests covered by the Motion to Compel are outside the scope of the Complaint and seek information which is not relevant to the Complaint before the Commission. Accordingly, Respondents' Motion to Compel is denied.

This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
G. O'Neal Hamilton, Vice Chairman

(SEAL)